

Objection Deadline: June 15, 2009

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Attorneys for National Fuel Gas Distribution Corporation

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

Chapter 11

General Motors Corp.,

Case No. 09-50026 (REG)
(Jointly Administered)

Debtors.

**OBJECTION OF NATIONAL FUEL GAS DISTRIBUTION CORPORATION
TO THE NOTICE OF (I) DEBTORS' INTENT TO ASSUME AND
ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED LEASES
OF PERSONAL PROPERTY AND UNEXPIRED LEASES
OF NONRESIDENTIAL REAL PROPERTY AND
(II) CURE AMOUNTS RELATED THERETO**

National Fuel Gas Distribution Corporation ("NFGD") by its attorneys, Phillips Lytle LLP, hereby objects on a limited basis ("Objection") to the Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property and Unexpired Leases of Nonresidential Real Property and (II) Cure Amounts Related Thereto dated June 5, 2009 ("Notice"). NFGD objects to the Notice because it fails to provide NFGD adequate

assurance of future performance of the alleged Assumable Executory Contracts (as defined below) and NFGD cannot determine which contracts are proposed to be Assumable Executory Contracts. In further support of its Objection, NFGD respectfully states as follows:

Background

1. On June 1, 2009 (“Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”).
2. On June 1, 2009, the Debtors also filed a motion seeking an order approving bidding procedures for the sale of substantially all of the Debtors’ assets, which included a procedure for the Debtors’ assumption and assignment of executory contracts (Docket No. 92) (“Procedures Motion”).
3. On June 2, 2009, the Court granted the Procedures Motion with respect to the sale procedures, including the procedure for assuming and assigning contracts to Vehicle Acquisition Holdings LLC (“VAH”) or the ultimate purchaser of the Debtors’ assets (Docket No. 274) (“Procedures Order”), which provided for sending a notice advising a contract counterparty that it was party to an Assumable Executory Contract¹ and the proposed Cure Amount related thereto.

NFGD Relationship

4. NFGD is a natural gas utility that provides utility service in the form of either transportation of natural gas commodity provided by a third party, or transportation plus the provision of natural gas commodity, to certain of the Debtors’ facilities in New York and Pennsylvania (“Utility Service”).

¹ Capitalized terms not expressly defined herein have the meaning ascribed to them in the Notice.

5. As a condition to providing such Utility Service, the Debtors are required to provide NFGD security in support of all obligations of the Debtors to NFGD. That security currently takes the form of cash deposits held by NFGD.

Notices

6. On June 8, 2009, NFGD² received three different copies of the Notice dated June 5, 2009 provided for in the Procedures Order. Pursuant to the Notice, parties have ten days from the date of the Notice to object to the assumption and assignment of any Assumable Executory Contract or to the Cure Amount proposed to be paid with respect thereto.

7. Attached to each Notice were three different user identification numbers and passwords to be used by NFGD on the specified website (“Web Site”) to view which contract(s) has/have been designated an Assumable Executory Contract by the Debtors and the Cure Amount with respect to such contract(s).

8. As of the date hereof, the Web Site, does not include any information as to which alleged NFGD contracts the Debtors are designating as an Assumable Executory Contract, what the proposed Cure Amount is or how the assignee will provide security to NFGD for providing the Utility Service going forward.

9. NFGD reserves its right to amend this Objection to include any additional facts as may be determined by its further investigation of the Notice and Web Site.

10. Any reply to this Objection should be served upon Phillips Lytle LLP, 3400 HSBC Center, Buffalo, New York 14203, Attn: Angela Z. Miller, Esq.

Objections

11. NFGD objects to each Notice on the following grounds:

² Each Notice was addresses to “National Fuel Distribution Company”. The correct name of the entity is National Fuel Gas Distribution Corporation.

A. Contracts cannot be assumed or assigned without an adequate showing of future performance. 11 U.S.C. § 365(b)(1); In re Luce Industries, Inc., 14 B.R. 529 (S.D.N.Y. 1981) (court erred in allowing debtor to assume agreement without assurance by debtor that arrearages would be paid and that debtor could perform).

B. As condition to providing Utility Service to the Debtors, the Debtors are required to provide NFGD security for all of its obligations owed to NFGD (“Contract Requirement”). In as much as the Debtors and/or VAH have failed to provide NFGD security for all obligations of VAH or the ultimate assignee as a condition to NFGD providing Utility Services going forward, the Debtors have failed to demonstrate adequate assurance of future performance with respect to NFGD.

C. NFGD cannot determine which contracts are proposed to be Assumable Executory Contracts based upon the information provided.

Memorandum of Law

12. Because the legal points and authorities upon which NFGD relies for purposes of this Objection are incorporated into the Objection, NFGD respectfully requests that the Court deem satisfied or, alternatively, waive any requirement of the filing of a separate memorandum of law.

Reservation of Rights

13. NFGD reserves the right (a) to amend, supplement, or otherwise modify this Objection and all attachments and exhibits hereto as necessary or proper; and (b) to raise such other and further objections to any proposed assumption and assignment, the Cure Amount, and/or adequate assurance of future performance with respect to the proposed assumption and assignment of any Assumable Executory Contract.

Conclusion

WHEREFORE, NFGD respectfully requests that the Court enter an Order (a) sustaining this Objection in its entirety and overruling the Notice to the extent it requests relief inconsistent with this Objection, and (b) providing NFGD with such other and further relief as is appropriate.

Dated: June 12, 2009
Buffalo, New York

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